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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,965

03/31/2005

Oren Gavriely

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01/22/2009

YORAM TSIVION

P.O. BOX 1307

PARDES HANNA, 37111

ISRAEL

EXAMINER

SMITH, PHILIP ROBERT

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

01/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,965	Applicant(s) GAVRIELY, OREN	
	Examiner PHILIP R. SMITH	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/31/05; 12/6/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election

- [01] Applicant's election without traverse of invention [01c] in the reply filed on 9/25/08 is acknowledged. Elected claims commonly maintain their original numbering. In this case, however, Applicant has canceled the withdrawn subject matter, and renumbered the elected subject matter as claims 1-3.

Claim Rejections - 35 USC § 112, Paragraph One

- [02] The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- [03] Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

- [04] Claim 1 broadly states that an imaging sensor send signals which are interpreted to indicate indications of vital functions. Claim 2 recites that "an alarm is set when a change of said indications of vital functions of a patient pass a predetermined threshold." The specification refers to two examples of instances of alarm:

The inspection tube of the invention may also be used to detect changes in indications of vital functions of a patient. Accordingly, image and acoustic signal are being detected, processed and compared to a reference base picture or sound structure. An alarm is set as soon as certain changes in the

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indication pass a predetermined threshold. For example, the accumulation of secretions, or development of excessive or diminished lung noises are abnormal.

- [05] Given that the "indications" are gleaned from an image sensor, the latter example, which requires an acoustic signal, is not pertinent. The former example, that of recognizing "the accumulation of secretions," would require undue experimentation if put into practice by a skilled artisan. The specification makes no attempt to teach how a tube could be constructed so as to (1) measure accumulation of secretion using an image sensor; (2) linearize said measurements according to some accumulation scale; (3) determine the threshold of over-accumulation.

Claim Rejections - 35 USC § 102

- [06] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United

States and was published under Article 21(2) of such treaty in the English language.

- [07] Claims 1,3 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore (4,253,447).
- [08] With regard to claim 1: Moore discloses a method for detecting changes in indications of vital functions of a patient (e.g. bleeding), wherein at least one imaging sensor ("charge coupled device (CCD) 30") incorporated in the anterior face of a tube used to convey fluids into and out of the body ("means to wash fluids and the like from the windows may also be located in this region along with, or in place of, the biopsy device") in said patient, continuously sends signals which are interpreted to indicate changes of said indications.
- [09] With regard to claim 3: As noted above, said signals are images.

Claim Rejections - 35 USC § 103

- [10] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
- [11] Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (4,253,447) in view of Shibata (2004/0044269).
- [12] Moore a method for detecting changes in indications of vital functions of a patient with an image sensor, as noted above.

[13] Moore does not disclose an alarm.

[14] Shibata discloses the following in [0048]:

The patient monitoring apparatus 4 of this constitution possesses the functions of a boundary value setting section, a comparing section, and a notifying section, and the like, and is capable of setting boundary values for each measured value and of providing a warning by means of the display of the display 4p, or the like, when measurement results exceed boundary values.

[14b] At the time of the invention, it would have been obvious to a person of ordinary skill in the art to provide a warning to a user of Moore's device if indications of a patient's vital functions reach a critical point. A skilled artisan would be motivated to do so in order to save the patient.

Conclusion

[15] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following disclose various alarms: Hill (2003/0078476), Belson (2002/0062062), Niida (2002/0045801).

[16] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip R Smith whose telephone number is (571) 272 6087 and whose email address is philip.smith@uspto.gov. The examiner can normally be reached between 9:00am and 5:00pm.

[17] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272 4764.

[18] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is

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available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Philip R Smith/

Examiner, Art Unit 3739

/Linda C Dvorak/

Supervisory Patent Examiner, Art Unit 3739